

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KRISLEE CARDINAL HALL,) Case No.: 14-CV-01404-LHK
Plaintiff,)
v.) ORDER GRANTING DEFENDANTS'
APOLLO GROUP, INC., et al.,) MOTION TO DISMISS; DENYING
Defendants.) PLAINTIFF'S MOTION TO SCHEDULE
) RULE 16 SCHEDULING
) CONFERENCE

Currently before the Court is Defendants Apollo Group, Inc. (“Apollo”) and University of Phoenix, Inc.’s (“UOP”) (collectively, “Defendants”) Motion to Dismiss Krislee Cardinal Hall’s (“Hall”) Complaint. (“Mot.”) ECF No. 8. Also before the Court is Hall’s Request to Schedule Rule 16 Scheduling Conference. ECF No. 39. Pursuant to Civil Local Rule 7-1(b), the Court concludes that this matter is appropriate for determination without oral argument and accordingly VACATES the hearing and case management conference scheduled for September 4, 2014, at 1:30 p.m. Having considered the submissions of the parties and the relevant law, the Court hereby GRANTS Defendants’ Motion to Dismiss without prejudice. Hall’s Request to Schedule Rule 16 Scheduling Conference is DENIED.

I. BACKGROUND

A. Factual Background

1 Defendant Apollo provides educational programs at the high school, college, and graduate
2 levels. (“Compl.”) ¶ 5, ECF No. 203. Apollo’s subsidiary, Defendant UOP, offers associates,
3 bachelors, masters, and doctoral degree programs in a number of fields, including criminal justice.
4 *Id.* ¶ 6. Hall received a Bachelor of Science in Criminal Justice Administration from Phoenix in
5 2006 and “completed online classes for Masters of Justice and Security Administration” in 2008.
6 *Id.* ¶ 4. However, Hall was unable to obtain a job in the criminal justice field. *Id.* ¶¶ 20-21. On
7 March 26, 2014, Hall, proceeding *pro se*, filed the present action, asserting claims against Apollo
8 and Phoenix for: (1) fraud; (2) breach of contract; (3) breach of the implied covenant of good faith
9 and fair dealing; (4) concealment; (5) reliance; (6) intentional infliction of emotional distress; (7)
10 negligent infliction of emotional distress; (8) false promise; (9) intentional misrepresentation; (10)
11 negligent misrepresentation; (11) opinions as statement of fact; and (12) invasion of privacy. *Id.* at
12 1.

13 The facts underlying all twelve of Hall’s asserted causes of action are essentially the same.
14 Specifically, Hall alleges that Defendants made various misrepresentations to her regarding the
15 nature and value of her criminal justice degrees. Hall alleges that prior to enrolling at UOP in June
16 of 2004, Robert Jacobs, “an employee and authorized agent of [D]efendants[],” informed Hall that
17 “credits obtained from education at defendants[] institutions were and would be transferable to
18 any university or college,” and that Hall would have lifetime access to UOP’s “Student Resource
19 Center[s].” *Id.* ¶¶ 10-11. Hall alleges that Joan Rodrigues, the “manager/director” of UOP’s
20 Fremont campus, similarly represented that credits from UOP would be transferable to any other
21 learning institution. *Id.* ¶¶ 15, 28. Hall further alleges that Rodrigues and various UOP professors
22 told her at various times during Hall’s time as a student at UOP that a degree in criminal justice
23 from UOP would enable Hall to get a job as an FBI special agent. *Id.* ¶¶ 16-19, 28.

24 Hall maintains that these representations were false. Hall contends that upon applying for a
25 job with the FBI, which Hall claims to have done in 2008, 2009, and 2010, she discovered that her
26 degrees from UOP did not qualify her for a position as an FBI special agent. *Id.* ¶ 28. Hall further
27 contends that she discovered that her credits from UOP were not transferable to “any university or
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1 college" in October 2011, when she unsuccessfully attempted to transfer her credits to law school.
 2 *Id.* Hall also claims that she was prevented from using a UOP student resource center for personal
 3 business in spite of Defendants' representation that she would enjoy lifetime access to these
 4 centers. *Id.* ¶ 30.

5 Hall identifies additional purported misrepresentations made by UOP employees. Hall
 6 claims that Joan Rodrigues claimed to have an MBA when she did not. *Id.* ¶ 34. Hall also alleges
 7 that several of her professors lied about their academic credentials and professional achievements.
 8 *Id.* ¶¶ 16-18.

9 B. Procedural History

10 Hall filed the Complaint in this action on March 26, 2014. ECF No. 1. The Complaint is
 11 nearly identical to a Second Amended Complaint filed in *Bernstein v. Apollo Group, Inc.*, Case No.
 12 13-CV-01701.¹ *Compare id.*, with Case No. 13-CV-01701, ECF No. 203. Accordingly, upon
 13 motion of Defendants, Case No. 13-CV-01701, ECF No. 210, the Court related the *Bernstein* and
 14 *Hall* cases on April 28, 2014. ECF No. 19.²

15 Defendants moved to dismiss the Complaint on April 21, 2014.³ Mot. Hall filed an
 16 "Opposition" to the Motion on April 23, 2014, in which Hall principally objected to Defendants'
 17 contention that the *Bernstein* and *Hall* actions were related. *See* ECF No. 13. Hall's April 23 filing
 18 also objected to Defendants', apparently erroneous, title of their Motion as a Motion to Dismiss a
 19 "Second Amended Complaint" on the ground that Hall had filed only one complaint. *See id.*

20

21 ¹ Hall had previously sought joinder in the *Bernstein* action, which this Court had denied on the
 22 ground that the basis for joinder was inadequately explained. *See* Case No. 13-CV-01701, ECF No.
 23 201 at 10-11. Although the instant complaints in the *Bernstein* and *Hall* actions are substantively
 24 identical, the Court addresses Defendants' motion to dismiss Ms. Bernstein's Second Amended
 25 Complaint in a separate order. *See* Case No. 13-CV-01701, ECF No. 284.

26 ² Unless otherwise noted, all remaining ECF citations are to Case Number 14-CV-01404.

27 ³ Defendants accompanied the Motion to Dismiss with a Request for Judicial Notice. ("RJN") ECF
 28 No. 9. Defendants ask the Court to take judicial notice of four documents filed in the *Bernstein*
 action. *See id.* The Court finds that these documents are all proper subjects for judicial notice, as
 they are publicly available court documents filed in another case. *See, e.g., Chrisanthis v. United*
States, No. 08-2472, 2008 WL 4848764, at * 1 (N. D. Cal. Nov. 7, 2008); *Del Puerto Water Dist.*
v. U.S. Bureau of Reclamation, 271 F. Supp. 2d 1224, 1233 (E.D. Cal. 2003). Accordingly, the
 Court GRANTS Defendants' Requests for Judicial Notice.

1 On April 29, 2014, Hall filed a “Response to Opposition” that again objected to the title of
2 Defendants’ Motion to Dismiss. *See* ECF No. 23. The April 29 filing also stated that *pro se*
3 pleadings are to be liberally construed and that Hall should be given leave to amend in the event
4 the Complaint is dismissed. *See id.* Also on April 29, 2014, Hall filed “Objections” to the Court’s
5 order relating the *Bernstein* and *Hall* actions. ECF No. 24.

6 Defendants filed a Reply in support of the Motion to Dismiss on May 12, 2014. ECF No.
7 34. Hall responded with a “Surreply to Reply” on May 13, 2014. ECF No. 35. On May 16, 2014,
8 Hall filed a Request to Schedule Rule 16 Scheduling Conference. ECF No. 39.

9 Since the inception of this case, Hall has also filed numerous motions seeking to compel
10 discovery. *See* ECF Nos. 36-37, 42-43, 45-46, 55. Magistrate Judge Grewal denied these motions
11 without prejudice to their renewal pending this Court’s ruling on Defendants’ instant Motion to
12 Dismiss. *See* ECF No. 72 at 2.

13 **II. LEGAL STANDARD**

14 A motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6) tests the legal
15 sufficiency of the plaintiff’s claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). When
16 determining whether a claim has been stated, the Court accepts as true all well-pleaded factual
17 allegations and construes them in the light most favorable to the plaintiff. *Reese v. BP Exploration*
18 (*Alaska*) Inc., 643 F.3d 681, 690 (9th Cir. 2011). However, a court need not accept as true
19 allegations contradicted by judicially noticeable facts, *Shwarz v. United States*, 234 F.3d 428, 435
20 (9th Cir. 2000), and the “[C]ourt may look beyond the plaintiff’s complaint to matters of public
21 record” without converting the Rule 12(b)(6) motion into one for summary judgment, *Shaw v.*
22 *Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995). Nor is the court required to ““assume the truth of
23 legal conclusions merely because they are cast in the form of factual allegations.”” *Fayer v.*
24 *Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (quoting *W. Mining Council v. Watt*,
25 643 F.2d 618, 624 (9th Cir. 1981)). Mere “conclusory allegations of law and unwarranted
26 inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183
27 (9th Cir. 2004).

1 While a complaint need not contain detailed factual allegations, it “must contain sufficient
2 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
3 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A
4 claim is facially plausible when it “allows the court to draw the reasonable inference that the
5 defendant is liable for the misconduct alleged.” *Id.*

6 Complaints drafted by *pro se* litigants are held to “less stringent standards than formal
7 pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court has an
8 obligation to construe *pro se* pleadings liberally and to afford the plaintiff the benefit of any doubt.
9 *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). “A district court should not dismiss a *pro se*
10 complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint
11 could not be cured by amendment.” *Id.* (internal quotation marks omitted). “[B]efore dismissing a
12 *pro se* complaint the district court must provide the litigant with notice of the deficiencies in his
13 complaint in order to ensure that the litigant uses the opportunity to amend effectively.” *Id.*
14 (quoting *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

15 **III. DISCUSSION**

16 Even under the liberal pleading standard afforded to *pro se* litigants, the Court concludes
17 that the Complaint fails to state any plausible claim for relief. The Court will address each of Hall’s
18 claims in turn, before turning to the question of whether to grant leave to amend.

19 **A. Fraud (Claims 1, 4, 5, 8, 9, 10, 11)**

20 The Complaint raises numerous claims for fraud. Specifically, Hall’s claims for fraud
21 (claim 1), concealment (claim 4), reliance (claim 5), false promise (claim 8), intentional
22 misrepresentation (claim 9), negligent misrepresentation (claim 10), and opinions as statements of
23 fact (claim 11), all rely on the allegation that Defendants’ made false statements regarding the
24 nature and value of a degree in criminal justice from UOP. *See* Compl. ¶¶ 28, 34-37, 39-43, 49-51,
25 54-58, 60-69. What is more, these claims all relate to the same set of misrepresentations—namely,
26 that a degree in criminal justice from UOP would enable Hall to find work as an FBI special agent

1 and that UOP credits would be transferable to “any” learning institution.⁴ *See id.* Accordingly, the
 2 Court will discuss these claims as a group.

3 A claim of fraud “must state with particularity the circumstances constituting fraud.” Fed.
 4 R. Civ. P. 9(b). The Ninth Circuit has “interpreted Rule 9(b) to mean that the pleader must state the
 5 time, place, and specific content of the false representations as well as the identities of the parties
 6 to the misrepresentation.” *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392-93 (9th Cir.
 7 1988) (internal quotation marks omitted).

8 Initially, the Court finds that Hall’s fraud claims based on Defendants’ representation that
 9 Hall’s degree would allow her to obtain a job with the FBI are untimely. In California, fraud claims
 10 must be brought within three years after the plaintiff discovers the facts giving rise to the fraud.
 11 Cal. Civ. P. Code § 338(d). Hall alleges that she applied for a job with the FBI beginning in 2008.
 12 Compl. ¶ 28. Accordingly, Hall must have learned in 2008 that her criminal justice degree was
 13 insufficient to qualify her for a position as an FBI special agent. Hall did not file this case until
 14 March 2014, more than three years since she first applied for a job with the FBI. ECF No. 1.
 15 Therefore, Hall’s fraud claims arising out of this alleged misrepresentation are barred by the statute
 16 of limitations and must be dismissed.

17 Hall’s fraud allegations based on Defendants’ representation that Hall’s UOP criminal
 18 justice credits would be transferable to any other learning institution fail as well. For one thing, it is
 19 unclear whether claims based on this representation are time-barred. Although Hall claims that she
 20 did not discover that Defendants’ representation regarding the transferability of credits were false
 21 until October 2011, when she attempted to transfer her credits to law school, *e.g.*, Compl. ¶ 28, this
 22 allegation is not, by itself, sufficient to establish that her claims are timely. Under California’s
 23 “discovery rule,” a cause of action does not accrue “until the plaintiff discovers, or has reason to
 24 discover, the cause of action.” *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807 (2005). In
 25

26 ⁴ Although Hall additionally claims that Defendants falsely represented that she would enjoy
 27 lifetime access to UOP’s student resource centers, none of Hall’s fraud-based causes of action
 28 attempts to state a claim based on this alleged misrepresentation. Accordingly, the Court will
 discuss this allegation only as it relates to Hall’s contract claims. *See infra* Part III.B.

1 order for this rule to apply, however, a plaintiff must plead facts to show “the inability to have
2 made earlier discovery *despite reasonable diligence.*” *Id.* at 808 (emphasis added) (internal
3 quotation marks omitted). Thus, for her claims to be timely, Hall must explain why she could not,
4 through the exercise of reasonable diligence, have discovered her fraud claims based on
5 Defendants’ purported misrepresentation regarding transferability of credits prior to October 2011.
6 The Complaint contains no such allegations of diligence.

7 In any event, even if Hall’s fraud claims regarding transferability of credits are timely, the
8 claims fail because the purported misrepresentation—that *other* learning institutions *would* accept
9 Hall’s criminal justice credits from UOP, *see, e.g.*, Compl. ¶¶ 30, 32—is a prediction concerning
10 future events and the actions of third parties, rather than a statement regarding an existing fact.
11 “Generally, actionable misrepresentation must be one of existing fact; predictions as to future
12 events, or statements as to future action by some third party, are deemed opinions, and not
13 actionable fraud.” *Cohen v. S & S Constr. Co.*, 151 Cal. App. 3d 941, 946 (1983) (internal
14 quotation marks omitted). There are exceptions to this rule where: (1) one party holds himself out
15 to be specially qualified and the other party reasonably relies upon the former’s superior
16 knowledge; (2) the opinion is by a fiduciary or other trusted person; or (3) a party states his opinion
17 as an existing fact or as implying facts that justify a belief in the truth of the opinion. *See id.*
18 However, Hall does not allege that any of these exceptions applies.⁵ Accordingly, the Court finds
19 that Hall fails to identify an actionable fraudulent statement with respect to her claims arising out
20 of Defendants’ statement regarding the transferability of credits, and her fraud claims based on this
21 statement must therefore be dismissed.

22 Finally, to the extent Hall seeks to bring fraud claims based on assorted other
23 misrepresentations identified in the Complaint, the Court finds that Hall has failed to state a claim
24 for fraud based on these additional misrepresentations. In particular, Hall repeatedly alleges that
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26 ⁵ Hall does allege that an exception to the general rule that predictions of future events are not
27 actionable fraud applies with regard to Defendants’ purported misrepresentation that Hall’s UOP
28 degree would enable her to work as an FBI special agent. *See* Compl. ¶ 42. The Complaint contains
no similar allegations with regard to Defendants’ remaining purported misrepresentations.

1 Joan Rodrigues falsely stated in November 2004 that she had an MBA. *See, e.g.*, Compl. ¶¶ 39, 49.
2 Any effort to state a claim for fraud based on this misrepresentation would fail for lack of reliance,
3 a necessary element of a claim sounding in fraud. *See Engalla v. Permanente Med. Grp., Inc.*, 15
4 Cal. 4th 951, 974 (1997) (“The elements of fraud that will give rise to a tort action for deceit are:
5 (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of
6 falsity (or scienter); (c) intent to defraud, i.e. to induce reliance; (d) *justifiable reliance*; and (e)
7 resulting damage.” (emphasis added) (internal quotation marks omitted)). Although Hall intimates
8 that Rodrigues’s false representation of her academic credentials played some role in convincing
9 Hall to enroll in UOP, this allegation is belied by the fact that Rodrigues made the false statement
10 *after* Hall’s enrollment. *Compare* Compl. ¶ 14 (Hall began attending UOP in July 2004), *with id.*
11 ¶ 28 (Rodrigues told Hall she possessed an MBA in November 2004). Consequently, Hall cannot
12 bring fraud claims based on Rodrigues’s allegedly false statement that Rodrigues had an MBA.

13 Hall also identifies numerous instances in which her professors allegedly misrepresented
14 their academic and professional credentials. *See id.* ¶¶ 16-18. The Complaint appears to tie these
15 misrepresentations to Hall’s decision to enroll at UOP, but again, Hall alleges that her professors
16 made these allegedly false statements *after* Hall enrolled and began coursework at UOP. *See id.*
17 Accordingly, these statements cannot serve as a basis for Hall’s fraud claims either.

18 In sum, the Court concludes that the Complaint’s causes of action for fraud (claim 1),
19 concealment (claim 4), reliance (claim 5), false promise (claim 8), intentional misrepresentation
20 (claim 9), negligent misrepresentation (claim 10), and opinions as statements of fact (claim 11) all
21 fail to state a claim for purposes of Rule 9(b). Accordingly, the Court GRANTS Defendants’
22 Motion to Dismiss these causes of action.

23 **B. Contract (Claims 2 and 3)**

24 Hall’s second and third causes of action assert claims for breach of contract (claim 2) and
25 breach of the implied covenant of good faith and fair dealing (claim 3). In California, “[t]he
26 standard elements of a claim for breach of contract are: (1) the contract, (2) plaintiff’s performance
27 or excuse for nonperformance, (3) defendant’s breach, and (4) damage to plaintiff therefrom.” *Wall*
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1 *St. Network, Ltd. v. N.Y. Times Co.*, 164 Cal. App. 4th 1171, 1178 (2008). Count 2 of the
 2 Complaint alleges that Hall and Defendants entered into an oral agreement on June 22, 2004,
 3 wherein Hall would pay for a UOP degree in criminal justice. Compl. ¶ 30. Hall further alleges that
 4 the essential terms of this oral agreement were that Hall would receive “[l]ifetime access to Student
 5 Resource Center Credits would be transferable to any learning institution . . . [and] [d]egree
 6 would qualify plaintiff to apply for special agent criminal justice position.” *Id.* As Defendants point
 7 out, *see* Mot. at 7, this claim is barred by California’s statute of frauds, which requires that any
 8 agreement “that by its terms is not to be performed within a year from the making thereof” be in
 9 writing in order to be enforceable. Cal. Civ. Code § 1624(a)(1); *see also, e.g., Rossberg v. Bank of*
 10 *Am.*, 219 Cal. App. 4th 1481, 1503 (2013) (concededly oral agreement that fell within statute
 11 of frauds not enforceable). The alleged agreement was for Hall to complete a multiyear criminal
 12 justice degree (and to receive “lifetime” access to UOP’s student resource centers), something that
 13 by its terms was not to be completed within a year of entering the agreement. Accordingly, the
 14 agreement alleged in the Complaint comes within the statute of frauds and was required to be in
 15 writing. As Hall concedes that the agreement was oral, Compl. ¶ 30, Hall’s breach of contract
 16 claim must be dismissed for failure to allege the existence of an enforceable contract.

17 The absence of a contract is also fatal to Hall’s claim for breach of the implied covenant of
 18 good faith and fair dealing. *See Justo v. Indymac Bancorp*, No. 09-1116, 2010 WL 623715, at *7
 19 (C.D. Cal. Feb. 19, 2010) (“Because the alleged oral contract is unenforceable under the statute of
 20 frauds, Plaintiffs’ breach of implied covenant claim fails with respect to that contract.” (citing
 21 *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 683-84 (1988))). Accordingly, the Court
 22 GRANTS Defendants’ Motion to Dismiss Hall’s second and third causes of action.

23 **C. Emotional Distress (Claims 6 and 7)**

24 Hall’s sixth and seventh causes of action assert claims for intentional (claim 6) and
 25 negligent (claim 7) infliction of emotional distress. “The tort of intentional infliction of emotional
 26 distress is comprised of three elements: (1) extreme and outrageous conduct by the defendant with
 27 the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2)

1 the plaintiff suffered severe or extreme emotional distress; and (3) the plaintiff's injuries were
2 actually and proximately caused by the defendant's outrageous conduct." *Cochran v. Cochran*, 65
3 Cal. App. 4th 488, 494 (1998). The conduct alleged must be "regarded as atrocious[] and utterly
4 intolerable in a civilized society." *Id.* at 496.

5 Hall's allegations of extreme and outrageous conduct fall far short of what is necessary to
6 state a claim for intentional infliction of emotional distress. Hall alleges that Defendants
7 misrepresented the value of a UOP degree and that some of Hall's professors misrepresented their
8 academic and professional credentials. Compl. ¶ 45. On its face, none of this conduct rises to the
9 level of conduct that is "atrocious[] and utterly intolerable in a civilized society."

10 The elements of a claim of negligent infliction of emotional distress are: (1) the defendant
11 engaged in negligent conduct; (2) the plaintiff suffered serious emotional distress; and (3) the
12 defendants' negligent conduct was a cause of the serious emotional distress. *Butler-Rupp v.*
13 *Lourdeaux*, 134 Cal. App. 4th 1220, 1226 n.1 (2005). Moreover, "unless the defendant has
14 assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is
15 available only if the emotional distress arises out of the defendant's breach of some other legal duty
16 and the emotional distress is proximately caused by that breach of duty." *Potter v. Firestone Tire &*
17 *Rubber Co.*, 6 Cal. 4th 965, 985 (1993). "Even then, with rare exceptions, a breach of the duty
18 must threaten physical injury, not simply damage to property or financial interests." *Id.* The
19 Complaint neither identifies any legal duty owed to Hall by Defendants, nor explains how
20 Defendants' breach of any duty proximately caused Hall emotional distress.

21 Due to the above-described pleading deficiencies, the Court GRANTS Defendants' Motion
22 to Dismiss Hall's sixth and seventh causes of action.

23 **D. Invasion of Privacy (Claim 12)**

24 Hall's final claim is for invasion of privacy. Compl. ¶ 71. Hall claims that on February 22,
25 2005, UOP Professor Lionel Rawlins ("Rawlins") "accosted Plaintiff [] in an elevator." *Id.* Hall
26 does not provide any further details regarding this incident.

Under California law, four distinct types of conduct may give rise to liability for invasion of privacy: “(1) intrusion into private matters; (2) public disclosure of private facts; (3) publicity placing a person in a false light; and (4) misappropriation of a person’s name or likeness.” *Hill v. Nat’l Collegiate Athletic Ass’n*, 7 Cal. 4th 1, 24 (1994). In order to state a claim for invasion of privacy based upon any one of these types of conduct, a plaintiff must allege: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” *Ruiz v. Gap, Inc.*, 380 F. App’x 689, 692 (9th Cir. 2010) (internal quotation marks omitted). “Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right.” *Id.* (internal quotation marks omitted).

The Complaint fails to state a claim for invasion of privacy. Hall has not alleged the existence of a legally protected privacy interest, a reasonable expectation of privacy, or conduct by Defendants invading her privacy. Indeed, the Complaint does not provide sufficient factual detail for the Court to understand what Hall means when she alleges that Rawlins “accosted” her. Accordingly, the Court concludes that Hall fails to state a claim for invasion of privacy and GRANTS Defendants’ Motion to Dismiss Hall’s twelfth cause of action.

E. Leave to Amend

The Court has serious misgivings about granting leave to amend in this case. Hall's Complaint is, in all material respects, identical to the Second Amended Complaint filed in the *Bernstein* case, which this Court has dismissed with prejudice. Case No. 13-CV-01701, ECF No. 284. However, as this is Hall's first complaint, and in light of the more liberal pleading standards that apply to *pro se* litigants, the Court will grant Hall leave to amend the Complaint. However, discovery in this case shall remain stayed until Hall files a complaint that can at least partially withstand a motion to dismiss. The Court further orders that the parties need not engage in a Rule 26(f) conference until after a complaint in this case survives a motion to dismiss.

IV. CONCLUSION

1 For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss in its
2 entirety without prejudice. Hall's Request to Schedule Rule 16 Scheduling Conference is DENIED.
3 Discovery shall remain stayed. Should Hall elect to file an amended complaint, she shall do so
4 within 21 days of this Order. Failure to meet the 21-day deadline or failure to cure the deficiencies
5 identified in this order will result in a dismissal with prejudice. Hall may not add new claims or
6 parties without leave of the Court or stipulation of the parties pursuant to Federal Rule of Civil
7 Procedure 15.

8 **IT IS SO ORDERED.**

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10 Dated: September 2, 2014
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LUCY H. KOH
United States District Judge